

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Peter Rickmyer,

Civil No. 13-CV-559 (SRN/LIB)

Plaintiff,

ORDER

v.

**Michael (Kip) Browne; Megan
Goodmundson; Dan Rother;
Robert Hodson;
John George Hubbard, II; Dave Haddy;
Ann McCandless; David
Schooler; John Willard Hoff;
William McDonald;
Jordan Area Community Council, LLC.,
and John Does 1-5,**

Defendants

Peter Rickmyer, 2118 25th Ave. N., Minneapolis, MN 55411, Pro Se

David J. McGee and Christopher R. Renz, Thomsen & Nybeck, PA, 2600 American Blvd. W., Ste. 400, Bloomington, MN 55431, for Browne, Goodmundson, Rother, Hodson, Hubbard, Haddy, McCandless, and Jordan Area Community Council, Inc.

Michael C. Wilhelm, Briggs & Morgan, PA, 80 S. 8th St., Ste. 2200, Minneapolis, MN 55402, for Schooler

Paul Allen Godfread, Godfread Law Firm, 6043 Hudson Rd., Ste. 305, Woodbury, MN 55125, for Hoff

Julie K. Bowman, Hennepin County Attorney's Office, 300 S. 6th St., Suite A-2000, Minneapolis, MN 55487 for McDonald

SUSAN RICHARD NELSON, United States District Court Judge

This matter is before the Court on Plaintiff's Motion for a Temporary Restraining Order ("TRO") [Doc. No. 215]. For the reasons stated below, Plaintiff's Motion is denied.

In this Court's Order of February 5, 2014 [Doc. No. 196], the Court ruled on a number of motions, including a Motion to Dismiss filed by the Jordan Area Community Council, Inc. ("JACC") Defendants¹ [Doc. No. 64]. The Court granted the JACC Defendants' motion, dismissing with prejudice the two claims against them in the Second Amended Complaint (Counts 1 and 2).

On February 28, 2014, Plaintiff filed a notice of appeal to the Eighth Circuit Court of Appeals, appealing certain rulings in the Court's February 5, 2014 Order, including the rulings that resulted in the dismissal of Counts 1 and 2 of the Second Amended Complaint, as well as the rulings "granting motion to dismiss with prejudice." (Notice of Appeal at 2 [Doc. No. 198].) Plaintiff now seeks a TRO to prevent the JACC Defendants from restricting his access to JACC open meetings and from criticizing the JACC Board of Directors at the meetings. (Mem. Supp. TRO at 1 [Doc. No. 218].)

As a general matter, a federal district court and a federal appellate court "should

¹ The JACC Defendants included Michael (Kip) Browne, Megan Goodmundson, Dan Rother, Robert Hodson, John George Hubbard II, Dave Haddy, Ann McCandless, and the Jordan Area Community Council, Inc.

not attempt to assert jurisdiction over a case simultaneously.” Unison Co., Ltd. v. Juhl Energy Dev., Inc., 2014 WL 2565652, at *1 (D. Minn. June 6, 2014) (quoting Griggs v. Provident Consumer Disc. Co., 459 U.S. 56, 58 (1982)). Accordingly, when a party files a notice of appeal, it is ““an event of jurisdictional significance – it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.”” Id.

Here, not only have all claims against the JACC and the JACC Defendants been dismissed with prejudice, but Plaintiff has appealed this Court’s ruling on these very claims to the Eighth Circuit. In Count I of the Second Amended Complaint, Rickmyer asserted a claim for violations of his constitutional rights pursuant to 42 U.S.C. §§ 1983, 1985, 1986, and 12203. (Second Am. Compl. ¶¶ 154-57 [Doc. No. 7].) Among the constitutional rights that Rickmyer claimed the JACC Defendants violated, was a First Amendment violation concerning “prior restraint of speech and liberty.” (Id. ¶ 155.) In the Second Amended Complaint’s factual allegations, Rickmyer alleged, among other things, that he had been ordered not to attend any JACC meetings whatsoever. (Id. ¶ 50.) As noted, Rickmyer’s present motion seeks an order barring the JACC Defendants from denying him access to their meetings. As this aspect of Rickmyer’s case is involved in his appeal to the Eighth Circuit, this Court lacks jurisdiction to entertain Plaintiff’s motion.

THEREFORE, IT IS HEREBY ORDERED THAT:

Plaintiff's Motion for a Temporary Restraining Order [Doc. No. 215] is **DENIED**.

Dated: October 1, 2014

s/Susan Richard Nelson
SUSAN RICHARD NELSON
United States District Court Judge